

# HOUSE . . . . . No.

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Message from His Excellency the Governor recommending legislation to reform the juvenile justice system in the Commonwealth. January 28, 2013.

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## The Commonwealth of Massachusetts



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GOVERNOR

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January 28, 2013.

To the Honorable Senate and House of Representatives:

I am filing for your consideration legislation entitled, “An Act to Reform the Juvenile Justice System in the Commonwealth.” On June 25, 2012, the United States Supreme Court ruled in *Miller v. Alabama* that mandatory criminal sentences of life in prison without the possibility of parole, imposed on juveniles who were less than eighteen when they committed their crimes, were unconstitutional. Massachusetts law currently mandates life without parole for juveniles convicted of first degree murder. Accordingly, our state law must change to comply with the *Miller* decision.

Like the *Miller* decision, this bill recognizes research establishing that the immaturity of the adolescent brain affects behavior, judgment and character. Fair treatment of juveniles requires holding them accountable for their actions and ensuring public safety, while also taking into account their reduced maturity and difficulty controlling impulses. This bill also recognizes the importance of providing juveniles with age-appropriate resources for rehabilitation. To this end, I propose extending the juvenile court’s jurisdiction over juveniles from 17 to 18 years of age to provide young offenders with the services and oversight that are unique to the juvenile justice system.

This legislation furthers these goals by including the following provisions:

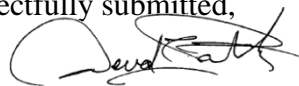
- It addresses the Supreme Court’s holding in *Miller v. Alabama* by eliminating mandatory sentences of life without parole for a juvenile between the ages of 14 and 18 adjudicated as a youthful offender for first-degree murder. Instead, the juvenile court may sentence these juveniles to either life with parole eligibility after 15 to 25 years served or to life without parole after first considering any mitigating factors and making written findings on

specific mitigating factors. In addition, if the juvenile was adjudicated as a youthful offender for murder in the first degree under the felony-murder rule or on a theory of joint venture, the juvenile could be eligible for parole after 10 to 25 years served, or sentenced to life without parole after the judge considers the mitigating factors, including the extent of the juvenile's participation in the crime.

- It returns the trial of juveniles accused of murder to the juvenile court where the juvenile court can employ its expertise in working with children.
- In cases when a prosecutor intends to seek a sentence of life without parole for a juvenile accused of first degree murder, this legislation requires the prosecutor to notify the court and the defendant of that intent during or before the pretrial conference.
- It requires that, prior to sentencing, the judge must hear evidence regarding the aggravating and mitigating factors and may only enter a sentence of life without parole if the judge finds, in writing, that there is clear and convincing evidence that the sentence is necessary for the safety of the public, is in the interest of justice, and a lesser sentence would not satisfy these interests.
- It requires that a juvenile between the ages of 14 and 18 adjudicated as a youthful offender for second-degree murder be sentenced to life with parole eligibility after 15 years served.
- It raises the age of criminal responsibility from 17 to 18 by increasing the maximum age for jurisdiction of the juvenile court and Department of Youth Services (DYS), in most cases raising the age limit from 17 to 18 years, and eliminating the jurisdiction of the Superior Court and District Court over 17 year-olds.
- It amends the definition of CORI to exclude adjudications concerning juveniles under the age of 18, increased from age 17.
- Finally, it allows for delinquent juveniles to voluntarily accept DYS post-discharge transitional services until age 21 and permits youthful offenders to voluntarily receive DYS post-discharge transitional services until age 23.

I urge your prompt consideration and enactment of this bill to bring Massachusetts into compliance with the Miller decision. This legislation ensures the provision of age-appropriate services and makes genuine rehabilitation a more realistic prospect for youth.

Respectfully submitted,



DEVAL L. PATRICK,  
*Governor.*

# The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen.

## AN ACT TO REFORM THE JUVENILE JUSTICE SYSTEM.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1       SECTION 1. Section 167 of chapter 6 of the General Laws, as appearing in the 2010 official  
2       edition, is hereby amended by striking out, in line 39, the word “17” and inserting in place thereof  
3       the following word:- 18

4       SECTION 2. Said section 167 of said chapter 6, as so appearing, is hereby further amended  
5       by striking out, in line 41, the word “17” and inserting in place thereof the following word:- 18

6       SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further amended  
7       by striking out, in line 42, the word “17” and inserting in place thereof the following word:- 18

8       SECTION 4. Section 52 of chapter 119 of the General Laws, as appearing in the 2010 official  
9       edition, is hereby amended by striking out, in line 5, the word "seventeen" and inserting in place  
10       thereof the following word:- eighteen

11       SECTION 5. Said section 52 of said chapter 119, as so appearing, is hereby further amended  
12       by striking out, in line 14, the word "seventeen" and inserting in place thereof the following  
13       word:- eighteen

14       SECTION 6. Section 54 of said chapter 119, as so appearing, is hereby amended by striking  
15       out, in line 2, the word “seventeen” and inserting in place thereof the following word:- eighteen

16       SECTION 7. Said section 54 of said chapter 119, as so appearing, is hereby further amended  
17       by striking out, in line 20, the word “seventeen” and inserting in place thereof the following  
18       word:- eighteen

19       SECTION 8. Section 58 of said chapter 119, as so appearing, is hereby amended by inserting  
20 after the word “eighteen,” in line 24, the words:- or nineteen if the child is committed in the  
21 child’s seventeenth year,

22       SECTION 9. Said section 58 of said chapter 119, as so appearing, is hereby further amended  
23 by inserting after the word “offense”, in line 29, the following words:- except as provided by  
24 section 72B of this chapter

25       SECTION 10. Said section 58 of said chapter 119, as so appearing, is hereby further amended  
26 by striking out, in line 68, the word “seventeenth” and inserting in place thereof the following  
27 word:- eighteenth.

28       SECTION 11. Said section 58 of said chapter 119, as so appearing, is hereby further amended  
29 by striking out, in line 73, the word “seventeenth” and inserting in place thereof the following  
30 word:- eighteenth.

31       SECTION 12. Said section 58 of said chapter 119, as so appearing, is hereby further  
32 amended by striking out, in line 90, the word “his eighteenth birthday” and inserting in place  
33 thereof the following words:- the age of departmental discharge at the eighteenth or nineteenth  
34 birthday

35       SECTION 13. Said section 58 of said chapter 119, as so appearing, is hereby further amended  
36 by inserting, in line 96, after the words “not less than one year” the following words:- or until  
37 such child attains the age of departmental discharge at the eighteenth or nineteenth birthday,  
38 whichever first occurs

39       SECTION 14. Section 60A of said chapter 119, as so appearing, is hereby amended by  
40 striking out, in line 16, the word “seventeenth” and inserting in place thereof the following word:-  
41 eighteenth

42       SECTION 15. Said section 60A of said chapter 119, as so appearing, is hereby further  
43 amended by striking out, in line 19, the word “seventeen” and inserting in place thereof the  
44 following word:- eighteen

SECTION 16. Said section 60A of said chapter 119, as so appearing, is hereby further amended by striking out, in line 21, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 17. Section 63A of said chapter 119, as so appearing, is hereby amended by striking out, in line 2, the word “17, or under the age of 18 and in state custody,” and inserting in place thereof the following word:- 18,

SECTION 18. Said section 63A of said chapter 119, as so appearing, is hereby further amended by striking out, in lines 18-19, the words “a child in need of services” and inserting in place thereof the following words:- a child requiring assistance

SECTION 19. Section 65 of said chapter 119, as so appearing, is hereby amended by striking out, in line 2, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 20. Section 67 of said chapter 119, as so appearing, is hereby amended by striking out, in line 1-2, the words “Except for children in need of service arrested pursuant to section thirty-nine H, whenever” and inserting in place thereof the following word:- Whenever

SECTION 21. Said section 67 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 2, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 22. Said section 67 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 19, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 23. Said section 67 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 20, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 24. Said section 67 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 35, the word “seventeen” and inserting in place thereof the following word:- eighteen

71       SECTION 25. Said section 67 of said chapter 119, as so appearing, is hereby further amended  
72 by striking out, in line 45, the word “seventeen” and inserting in place thereof the following  
73 word:- eighteen

74       SECTION 26. Section 68 of said chapter 119, as so appearing, is hereby amended by striking  
75 out, in line 2, the word “seventeen” and inserting in place thereof the following word:- eighteen

76       SECTION 27. Said section 68 of said chapter 119, as so appearing, is hereby further amended  
77 by striking out, in line 31, the word “seventeen” and inserting in place thereof the following  
78 word:- eighteen

79       SECTION 28. Said section 68 of said chapter 119, as so appearing, is hereby further amended  
80 by striking out the eighth paragraph.

81       SECTION 29. Section 68A of said chapter 119, as so appearing, is hereby amended by  
82 striking out, in line 1, the word “seventeen” and inserting in place thereof the following word:-  
83 eighteen

84       SECTION 30. Section 70 of said chapter 119, as so appearing, is hereby amended by striking  
85 out, in line 2, the word “seventeen” and inserting in place thereof the following word:- eighteen

86       SECTION 31. Section 72 of said chapter 119, as so appearing, is hereby amended by striking  
87 out, in line 2, the word “eighteenth” and inserting in place thereof the following word:- nineteenth

88       SECTION 32. Said section 72 of said chapter 119, as so appearing, is hereby further amended  
89 by striking out, in line 8, the word “person”, and inserting in place thereof the following words:-  
90 delinquent child

91       SECTION 33. Said section 72 of said chapter 119, as so appearing, is hereby further amended  
92 by striking out, in line 9, the word “seventeenth” and inserting in place thereof the following  
93 word:- eighteenth

94       SECTION 34. Said section 72 of said chapter 119, as so appearing, is hereby further amended  
95 by striking out, in line 10, the word “seventeenth” and inserting in place thereof the following  
96 word:- eighteenth

SECTION 35. Said section 72 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 10, the word “eighteenth” and inserting in place thereof the following word:- nineteenth.

SECTION 36. Said section 72 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 12, the word “seventeenth” and inserting in place thereof the following word:- eighteenth

SECTION 37. Said section 72 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 13, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 38. Said section 72 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 16, the words “such persons” and inserting in place thereof the words:- youthful offenders

SECTION 39. Said section 72 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 16, the word “eighteenth” and inserting in place thereof the following word:- nineteenth

SECTION 40. Section 72A of said chapter 119, as so appearing, is hereby amended by striking out, in line 2, the word “seventeenth” and inserting in place thereof the following word:- eighteenth

SECTION 41. Said section 72A of said chapter 119, as so appearing, is hereby further amended by striking out, in line 2, the word “eighteenth” and inserting in place thereof the following word:- nineteenth

SECTION 42. Said chapter 119 is hereby further amended by striking out section 72B, as so appearing, and inserting in place thereof the following section:-

Section 72B. (a) If a person is adjudicated as a youthful offender of murder in the first degree under the provisions of [section 1 of chapter 265](#), said murder having been committed on or after his fourteenth birthday and before his eighteenth birthday, the court shall commit the person to

such punishment as is provided by law for the offense, except that the person may be eligible for parole after serving a term of years if ordered by the court pursuant to subsections (f) or (g) of this section; provided, however, that the person shall not be sentenced to life without parole unless at or before the pretrial conference, the prosecuting attorney files with the court and opposing counsel a notice of the prosecutor's intent to seek a sentence of life without parole.

(b) If a person is adjudicated as a youthful offender of murder in the second degree under the provisions of section 1 of chapter [265](#), said murder having been committed on or after his fourteenth birthday and before his eighteenth birthday, the court shall commit the person to such punishment as is provided by law; however, said person shall be eligible for parole after 15 years of serving the person's sentence.

(c) The court shall not suspend the commitment of a person adjudicated a youthful offender of murder in the first or second degree.

(d) A person who is adjudicated a youthful offender of murder and is sentenced to a state prison but who has not yet reached his eighteenth birthday shall be held in a youthful offender unit separate from the general population of adult prisoners; provided, however, that such person shall be classified at a facility other than the reception and diagnostic center at the Massachusetts Correctional Institution, Cedar Junction, and shall not be held in any maximum security state correctional facility prior to his eighteenth birthday unless the commissioner of correction determines that no less restrictive placement would ensure protection of the public, correctional staff, said person or others.

(e) If a person is not adjudicated a youthful offender of murder in the first or second degree, but is adjudicated of a lesser included offense or a criminal offense properly joined under [Massachusetts Rules of Criminal Procedure 9\(a\)\(1\)](#), then the court shall make its disposition in accordance with section fifty-eight of this chapter.

(f) A person adjudicated as a youthful offender of murder in the first degree under the provisions of section 1 of chapter 265, said murder having been committed on or after his



fourteenth birthday and before his eighteenth birthday, may be eligible for parole after not less than 15 nor more than 25 years of serving the person's sentence. The sentencing court, as part of its sentence, shall specify the number of years that the person must serve before becoming eligible for parole. The sentencing court may order that the person never be eligible for parole, but only after considering all aggravating and mitigating circumstances and making written findings on each of the following factors:

- (1) the person's age at the time of the offense;
- (2) the person's immaturity;
- (3) the person's ability to appreciate the risk associated with, and consequences of, the person's criminal misconduct, and whether the person acted alone;
- (4) the person's intellectual capacity;
- (5) the person's prior adjudications or convictions;
- (6) the person's mental health and history of treatment;
- (7) the person's mental and emotional development;
- (8) the person's family background and home environment;
- (9) the amount and nature of familial or peer pressure exerted on the person;
- (10) the likelihood that the youthful offender is capable of change and would benefit from rehabilitation; and
- (11) any victim impact statement.

(g) Notwithstanding subsection (f) of this section, a person adjudicated a youthful offender of murder in the first degree pursuant to the felony murder rule or pursuant to a theory of joint venture, said murder having been committed on or after his fourteenth birthday and before his eighteenth birthday, may be eligible for parole after not less than 10 nor more than 25 years of serving the person's sentence. The sentencing court, as part of its sentence, shall specify the number of years that the person must serve before becoming eligible for parole. The sentencing court may order that the person never be eligible for parole, but only after considering all

aggravating and mitigating circumstances and making written findings on each of the following factors:

- (1) the person's age at the time of the offense;
- (2) the person's immaturity;
- (3) the person's ability to appreciate the risk associated with, and consequences of, the person's criminal misconduct, and whether the person acted alone;
- (4) the person's intellectual capacity;
- (5) the person's prior adjudications or convictions;
- (6) the person's mental health and history of treatment;
- (7) the person's mental and emotional development;
- (8) the person's family background and home environment;
- (9) the amount and nature of familial or peer pressure exerted on the person;
- (10) the likelihood that the youthful offender is capable of change and would benefit from rehabilitation; and
- (11) any victim impact statement.

(h) Prior to sentencing a child adjudicated as a youthful offender for murder in the first degree, the sentencing judge shall conduct an evidentiary hearing at which the parties may offer evidence regarding any relevant aggravating or mitigating factors, including, but not limited to, the specific factors enumerated in subsections (f) and (g) of this section. Such evidence may include expert witness testimony, including expert witness testimony regarding adolescent brain development.

(i) The sentencing judge shall not enter a sentence of life without parole pursuant to either subsection (f) or subsection (g) unless, after considering all applicable aggravating and mitigating factors, the sentencing judge finds, in writing, that the prosecution has proven, by clear and convincing evidence, that a sentence of life without parole is necessary for the safety and security

of the public, is in the interests of justice, and that a lesser sentence would not satisfy these interests.

SECTION 43. Section 74 of said chapter 119, as so appearing, is hereby amended by striking out, in line 3, the word “seventeenth” and inserting in place thereof the following word:-  
eighteenth

SECTION 44. Said section 74 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 10, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 45. Said section 74 of said chapter 119, as so appearing, is hereby further amended by striking out the second paragraph.

SECTION 46. Section 84 of said chapter 119, as so appearing, is hereby amended by striking out, in line 11, the words “seventeen (or eighteen)” and inserting in place thereof the following words:- eighteen (or nineteen)

SECTION 47. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 17, the words “one thousand nine hundred and”

SECTION 48. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 17, the word “guilty” and inserting in place thereof the following word:-  
adjudicated

SECTION 49. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 22, the word “defendant” and inserting in place thereof the following word:- youth

SECTION 50. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 28, the word “defendant’s” and inserting in place thereof the following word:- youth’s

SECTION 51. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 30, the word “defendant” and inserting in place thereof the following word:- youth

SECTION 52. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 34, the word “defendant” and inserting in place thereof the following word:- youth

SECTION 53. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 40, the word “defendant” and inserting in place thereof the following word:- youth

SECTION 54. Said section 84 of said chapter 119, as so appearing, is hereby further amended by striking out, in line 45, the words “one thousand nine hundred and”

SECTION 55. Section 15 of chapter 120 of the General Laws is hereby repealed.

SECTION 56. Section 16 of chapter 120 of the General Laws, as appearing in the 2010 official edition, is hereby amended by striking out in lines 3-4 the words “unless a petition is filed by the department under section 17”.

SECTION 57. Said section 16 of said chapter 120, as so appearing, is hereby further amended by striking out in line 7 the words “unless a petition is filed by the department under section 17”

SECTION 58. Said section 16 of said chapter 120, as so appearing, is hereby further amended by striking out in line 9 the words “delinquent child or”

SECTION 59. Said section 16 of said chapter 120, as so appearing, is hereby further amended by striking out the last sentence.

SECTION 60. Said section 16 of said chapter 120, as so appearing, is hereby further amended in inserting after the first paragraph, the following paragraph:- For any delinquent child previously committed to the department, the department may offer post-discharge transitional services until the youth reaches the age of twenty-one. For any previously committed youthful offender, the department may offer post-discharge transitional services until the youth reaches the

age of twenty-three. Post-discharge services are voluntary and the agreement to provide and accept them is terminable by either the department or the youth.

SECTION 61. Section 17 of said chapter 120 is hereby repealed.

SECTION 62. Section 18 of said chapter 120 is hereby repealed.

SECTION 63. Section 19 of said chapter 120, as so appearing, is hereby amended by striking out the first sentence.

SECTION 64. Section 21 of said chapter 120, as so appearing, is hereby amended by striking, in lines 6-7, the word “conviction” and inserting in place thereof the following word:- adjudication

SECTION 65. Section 21 of said chapter 120, as so appearing, is hereby further amended by striking, in line 9, the word “conviction” and inserting in place thereof the following word:- adjudication.

SECTION 66. Section 21 of said chapter 120, as so appearing, is hereby further amended by striking, in lines 9-10, the word “conviction” and inserting in place thereof the following word:- adjudication

SECTION 67. Said section 21 of said chapter 120, as so appearing, is hereby further amended by striking out, in line 17, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 68. Section 21 of said chapter 120, as so appearing, is hereby further amended by striking, in line 21, the word “waywardness” and inserting in place thereof the following word:- assistance

SECTION 69. Section 133A of chapter 127 of the General Laws, as appearing in the 2010 official edition and as amended by section 37 of chapter 192 of the acts of 2012, is hereby amended by inserting after the first sentence the following sentence:- Notwithstanding any other provision, prisoners who were sentenced to life imprisonment for murder in the first degree

pursuant to section 72B of chapter 119 may be eligible for parole at the expiration of the minimum term fixed by the court.

SECTION 70. Section 152 of chapter 127 of the General Laws, as so appearing, is hereby amended by striking out, in line 8, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 71. Said section 152 of chapter 127 of the General Laws, as so appearing, is hereby further amended by striking out, in line 9, the word “seventeen” and inserting in place thereof the following word:- eighteen

SECTION 72. Section 2 of chapter 265 of the General Laws, as appearing in the 2010 official edition, is hereby amended by inserting after the last sentence the following sentence:- Youthful offenders shall be sentenced for first and second degree murder as provided in section 72B of chapter 119.